IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2012

Coram

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.998 of 2003

M/s.S.B.Suji Chits (Pvt) Ltd.,
Rep. by its Manager,
R.Jaya Kumar,
S/o.Late Ramasamy,
Having Office at No.87, First Street,
Gopalapuram, Coimbatore District. .. Petitioner/Petitioner

Vs.

R.Rajalakshmi .. Respondent/Respondent

Prayer :- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set-aside the judgment passed in S.T.C.No.1761 of 1996 by the Judicial Magistrate-III, Coimbatore dated 11.02.2003 and impose a severe punishment, order compensation to the petitioner.

For Petitioner : Mr.K.Kalyanasundaram

For Respondent : No appearance

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ORDER

The revision petitioner / complainant has preferred this Criminal Revision in Crl.R.C.No.998 of 2003 against the judgment made in S.T.C.No.1761 of 1996, on the file of the Judicial Magistrate-III, Coimbatore.

2. The complainant's case is as follows:-

The complainant is carrying on business in the field of chit and finance, in Coimbatore District. The accused became a subscriber in the complainant's company in the group number 'S'/949/93. The above said group is for the value of Rs.50,000/- and the duration of the said group is 25 months and the amount payable by the accused is Rs.2,000/- per month. The accused had issued a cheque, dated 24.02.1996, drawn on M/s. Indian Bank, ADUC Branch, Coimbatore (Cheque No.810874), in favour of the complainant, for a sum of Rs.20,000/-, towards the amount for subscription payable to the complainant. The complainant presented the above cheque for encashment on 29.02.2006 with their bankers, M/s.The Lakshmi Vilas Bank Ltd., Uppilipalayam Branch, Coimbatore,

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but it was returned unpaid due to "insufficient funds" in the account of accused as on 29.02.1996. The complainant sent a lawyer's notice to the accused on 11.03.1996, which was received by the accused on 16.03.1996, but the accused had neither replied to the notice nor had paid the cheque amount. Hence, the complaint was filed against the accused before the Judicial Magistrate-III, Coimbatore under Section 138 of Negotiable Instruments Act.

3. On the complainant's side, four witnesses were examined, viz., P.W.1 to P.W.4 and nine documents were marked as Exs.P1 to P9 viz., Ex.P1-cheque drawn on Indian Bank, dated 24.02.1996, Ex.P2-return memo dated 28.02.1996, Ex.P3-debit advice dated 29.02.1996, Ex.P4-lawyers notice dated 11.03.1996, Ex.P5-acknowledgment card, Ex.P6-bank account statement of accused, Ex.P7-power agent letter given by firm empowering P.W.1 to adduce evidence on their behalf; Ex.P8-bank account statement of complainant's firm, Ex.P9-chit transaction agreement marked by the accused. On the side of the accused, the accused was examined as R.W.1 and two documents were marked, viz., Ex.R1-receipt for payment of Rs.10,000/-, dated 22.09.2000, made by the accused to complainant, Ex.R2-receipt for payment of Rs.5,000/- dated 21.10.2000, made by accused to complainant.

4. P.W.1, Mandhirachalam, the Manager of the complainant firm viz., M/s.S.B.Suji Chits (Pvt) Ltd., had adduced evidence which is corroborative with the statements made in the complaint and in support of his evidence had marked Exs.P1, P2, P3, P5, P7 and P8. After P.W.1 had left the service of the complainant's firm, one Mr.Jayakumar (P.W.3) had joined as the Recovery Assistant in the complainant's firm; he had also adduced evidence which is corroborative of the statements made in the complaint. P.W.2, Ramachandran, the Bank Officer of Indian Bank had deposed in his evidence that when the impugned cheque (Ex.P1) had been presented in his bank for encashment on 28.02.1996, it had been returned unpaid as the account balance in the account of the accused was only Rs.1062.98, and in support of his evidence had marked Ex.P6, the bank account statement of accused.

5. P.W.4, Dinakaran, the Manager of Lakshmi Vilas Bank, wherein the complainant had an account, had deposed in his evidence about return of cheque (Ex.P1) and had marked Ex.P8, the bank account statement of complainant.

6. Further during cross-examination by the accused side, the chief agreement signed by the accused had been marked as Ex.P9 by the side of the complainant.

7. R.W.1, the accused had deposed in her evidence that she was a member in the 'S' group chit conducted by the complainant; that on bidding successfully in the said chit, and when she received the bid amount from the complainant, blank signed cheques and blank signed pronotes had been given by her to the complainant as security; that after the present case was initiated

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against her, she had deposited Rs.10,000/- on 22.09.2000 and another Rs.5,000/- on 21.10.2000 in the complainant's firm; that the receipts for the said amounts had been marked as Exhibits R1 and R2; that she has been informed by the complainant that the case filed against her would be withdrawn, only if she pays an amount of Rs.30,000/- to the complainant; that she has repaid all the dues and no debt or liability exists against her with the complainant's firm.

8. From a scrutiny of Ex.R2, it is seen that the chit group mentioned in the receipt is 'W'. It is also seen from Ex.P9, the chit agreement which has been signed by the accused that the accused was a member of chit group 'W'. It has also been admitted by the accused that she is a member of the chit group 'S' also. On comparing the documentary evidence, Exs.R2 and P9, the evidence of P.W.1 and P.W.3, it is seen that the accused was a member of both 'S' and 'W' group. The learned judge opined that the payments made by the accused as per Ex.R1 and R2 were only to service the debt incurred in 'W' group of chit. Hence, the learned judge held that the present complaint was for return of money advanced to the accused in 'S' group of chit, i.e., Rs.50,000/-. The learned judge held that the cheque for Rs.20,000/- issued by the accused was to repay a part payment of loan advanced to her on the said chit. The learned Magistrate was of the opinion that if the accused had not been a member in the 'S' group of chits conducted by the complainant (S/949/53) and if she did not have to repay the chit dues of Rs.20,000/-, she could have raised an objection immediately after receipt of Ex.P4 (lawyer's notice) and sent a reply notice. As such, the learned judge held that the contention of the accused that she had made full and final payment of dues i.e., a sum of Rs.15,000/- for service of loan availed by her in 'W' group of chits in the year 2000, and that she does not owe the complainant any further sums of money was not acceptable and believable.

9. Considering the other oral and documentary evidence, the learned Magistrate held the accused guilty of offence under Section 138 of Negotiable Instruments Act and imposed a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month.

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10. Aggrieved by the said judgment and conviction passed by the trial Court, the revision petitioner / complainant has preferred the present revision in Crl.R.C.No.998 of 2003 before this Court.

11. The learned counsel for the revision petitioner has contended that the Court below ought to have held that the cheque amount of Rs.20,000/- was not paid to the complainant and awarded maximum punishment provided in the Act, and also awarded compensation to the complainant of twice of the cheque amount. It was also stated that the Court below erred in giving a lenient punishment to the accused only on the ground that she was a lady and a professor in the College.

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12. On verifying the facts and circumstances of the case and submission made by the learned counsel for the revision petitioner and on scrutinizing the impugned judgment of the trial Court passed in S.T.C.No.1761 of 1996, on the file of Judicial Magistrate-III, Coimbatore, this Court is of the view that the fine of Rs.1,000/- imposed and in default the accused was to undergo one month simple imprisonment ordered by the learned Magistrate is on the lower side. The complainant has proved his case against the accused. As such, the learned Magistrate has to impose adequate punishment on the accused. Therefore, this Court is constrained to modify the sentence and as such this Court imposes a sentence of three months simple imprisonment and also awards a compensation of Rs.20,000/- to the complainant payable by the accused, as it is found to be fair and equitable.

13. However, the instant case has been filed in the year 1996. Hence, this Court directs the learned Magistrate-III, Coimbatore to issue bailable warrant to the accused forthwith and secure her into judicial custody, to undergo simple imprisonment for a period of three months. If the accused remits the compensation amount of a sum of Rs.20,000/- to the credit of S.T.C.No.1761 of 1996, on the file of Judicial Magistrate-III, Coimbatore before being remanded into judicial custody, she would be set at liberty and this Court order would not be operated further against the accused. If the accused pays the compensation amount, then the complainant is at liberty to withdraw the same, after filing a Memo.

14. The above direction has been ordered by invoking the discretionary power vested with this Court.

15. Resultantly, the above revision is disposed of with the above observations. Consequently, the order passed in S.T.C.No.1761 of 1996 on the file of Judicial Magistrate-III, Coimbatore, dated 11.02.2003 is modified. Accordingly ordered.

r n s

Sd/-
Asst. Registrar(W)

//True Copy//

Sub Asst. Registrar

To

1.The Judicial Magistrate-III, Coimbatore.
2.Do Through the Chief Judicial Magistrate, Coimbatore.
3.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. K. Kalyanasundaram, Advocate SR No.25859

VD(CO)
SR/20.6.2012.

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